

**MINUTES OF THE
JUDICIAL RETENTION ELECTION TASK FORCE**

Tuesday, June 19, 2007 – 10:00 a.m. – Room W130 House Building

Members Present:

Sen. D. Chris Butters, Senate Chair
Rep. Curtis Oda, House Chair
Sen. Gregory S. Bell
Rep. Jackie Biskupski
Rep. DeMar Bud Bowman
Judge Hans Q. Chamberlain
Rep. Glenn A. Donnelson
Chief Justice Christine M. Durham
Sen. Lyle W. Hillyard
Rep. Rosalind J. McGee

Sen. Ross I. Romero

Judge Gary D. Stott

Rep. Scott L. Wyatt

Members Absent:

Rep. Eric K. Hutchings

Staff Present:

Jerry D. Howe, Policy Analyst

Christopher R. Parker, Associate General Counsel

Brooke Ollerton, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Butters called the meeting to order at 10:09 a.m. Members of the Task Force introduced themselves and the chairs offered opening statements about the purpose of the Task Force.

2. Article VII -- Historical Context

Mr. Howe referred task force members to Justice Dallin Oaks' comments about contested elections and retention elections for judges on pages 17 and 18 of the mailing packet. He explained that the purpose of the judicial evaluation process is to inform both judges and the public on judicial performance. He noted that the Task Force would explore whether the information supplied in the voter information pamphlets correlates with retention election votes.

3. Utah's Selection, Retention, Discipline, and Removal Process

Mr. Parker presented a slide show presentation on the judicial selection, retention, discipline, and removal processes in Utah. He noted that the interrelationships between each stage are complex and revising any part of the process will affect the other parts.

Members of the Task Force discussed the opportunity for public involvement in each stage of the process and the organization of the judicial nominating commissions.

4. Voter Information: Trends and Practices in Retention Election States

Mr. Parker presented "Judicial Retention: Voter Information Provided in States with Merit Selection and Judicial Retention Elections," which was distributed prior to the meeting. He described the composition of Utah's Judicial Council and the judicial performance surveys it administers.

5. Retention Election Data 1988–2006

Mr. Howe distributed "Information Published in the Voter Information Pamphlet 1988–2006 Compared to Average Retention Yes Vote" and described the relationship between the information provided and

retention votes over the years. He distributed a packet of charts on 1988–2006 judicial retention election results and analysis and reviewed the data. Referring task force members to "Correlation Chart 1" and "Correlation Chart 2" on the last two pages of the packet, he explained that there was little correlation between the results of the attorney survey and retention election votes.

Sen. Hillyard mentioned that for one judge who was not retained this year, media campaigns were launched in the weeks before the election. Such coverage makes it hard for judges to respond because they don't have campaign funds or adequate time. He wondered if the groups distributing this information have a mechanism to make their information known during the formal evaluation process.

Chief Justice Durham said that because the Judicial Council's certification process is intentionally cumbersome, it's difficult for the Judicial Conduct Commission to respond to information that surfaces just before elections.

Sen. Bell pointed out that there is not much deviation in retention votes in a district when looking at voter information provided. He commented that the information in the voter information pamphlet does not appear to affect voting behavior.

Mr. Howe referred task force members to the last two pages of the packet of charts and explained that correlation is measured by R-scores, with a score of "1" indicating a strong correlation and a score of "0" indicating randomness. He reported that the correlation between the percent of favorable responses on the attorney surveys and the percent of favorable votes for judges in retention elections was 0.2669, which indicates a weak correlation. He mentioned that staff had researched newspapers articles on each judge standing for retention from 1988–2006 and found substantial press coverage that could have affected the vote.

Rep. Wyatt said that he believes there will always be a 20 to 30 percent "no" vote because judges standing for retention appear at the end of the ballot and voters often lose interest. He added that early voting may eliminate some of the effects of negative press right before an election.

Judge Stott commented that it is hard to explain why people vote the way they do. He shared an experience of a man who encouraged people to vote "no" on all judges in retention elections because of a negative experience he had in court.

Chief Justice Durham pointed out that judges see their performance evaluations and that the information is used in planning training and supervision.

Sen. Bell said that the voter information pamphlet is not intuitive to most voters. He suggested hiring a public relations firm to improve the presentation of the pamphlet.

Rep. McGee asked if Susan Olson, the author of an article which was distributed in the mailing packet, had continued her research on judicial retention elections. Mr. Howe replied that he didn't know, but that the Task Force could invite her to testify at a future meeting.

Judge Chamberlain pointed out that even if voters don't use the information from the attorney surveys, judges find it useful in evaluating their own performance.

Rep. Oda noted that the response rate for the attorney surveys is low and that he would like the Task Force to consider ways of improving it.

6. Other Business / Adjourn

The Task Force scheduled its next meeting for Tuesday, August 14, 2007 at 8:00 a.m.

Dr. Gregory H. Coon, citizen, distributed a packet of materials.

Chair Buttars adjourned the meeting at 11:56 a.m.